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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,409	06/24/2004	Nikolai Babich		4395
51896	7590	08/24/2005		EXAMINER
ILYA ZBOROVSKY			DONOVAN, LINCOLN D	
6 SCHOOLHOUSE WAY				ART UNIT
DIX HILLS, NY 11746				PAPER NUMBER
			2832	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/500,409	BABICH, NIKOLAI	
	Examiner	Art Unit	
	Lincoln Donovan	2832	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 June 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-28 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 24 June 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1.) Certified copies of the priority documents have been received.
 2.) Certified copies of the priority documents have been received in Application No. _____.
 3.) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>06-24-04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of claims 1-12 in the reply filed on 01-04-05 is acknowledged. The traversal is on the ground(s) that all of the claims have a common inventive idea. This is found persuasive. Claims 13-26 are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the step of "with a possibility of" is unclear. No specific step has been defined.

In claims 13, 21-22 and 25 the structure of "with a possibility of" is unclear. No specific structure has been defined.

In claim 25, applicant should clarify and define the structure intended by "cup-cover-rod-cup bottom".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13- rejected under 35 U.S.C. 103(a) as being unpatentable over PCTUA00/00005 in view of .

Regarding claim 13, PCTUA00/00005 discloses an electromagnetic drive [10, figure 5] having at least one winding [4] an immovable stator [9b], a movable core [9a] formed in a u-shape and a magnetically hard member [5] cooperating with the movable piece.

PCTUA00/00005 disclose everything claimed except the movable core having an air gap, the magnetically hard member forming a guide portion for the movable member and the specific activation of the electromagnetic drive.

DE 19639545 discloses, as acknowledged by applicant [specification page 4-page 5], a magnetic drive, which is formed as at least one magnetizing coil on a composite magnetic guide with an immovable stator, a movable core and at least one air gap, wherein at least a part of the magnetic guide is formed as an insert of a magnetically hard material with a possibility of controlling a magnetic flux in the magnetic guide by its remagnetization by supply of short-term pulses of current of different polarity into a winding of the magnetizing coil.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the magnetic flux control and guide design of DE 1969545 with PCTUA00/00005 in order to regulate and control operation of the actuator.

Regarding claim 15, PCTUA00/00005 discloses the core formed as a plate with an n-like shape in a longitudinal cross-section [figure 5].

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 10/192,523. Although the conflicting claims are not identical, they are not patentably distinct from each other because the pulses claimed would provide the magnetic control of the circuit.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

Claims 21-22 and 25 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 14, 16-20, 23-24 and 26-28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Neill [US 4,216,849] and Mohler et al. [US 6,078,236].

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lincoln Donovan whose telephone number is 571-272-1988. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Enad Elvin can be reached on 571-272-1990. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lhd

A handwritten signature of "LINCOLN DONOVAN" is written over a typed nameplate. The nameplate contains the following text:
LINCOLN DONOVAN
PRIMARY EXAMINER
GROUP 2100